

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 2, 4-9, 14 and 40-53 are pending in the application, with claims 14, 40 and 41 being the independent claims. Claims 40 and 41 currently stand withdrawn. Claims 1, 12-13 and 15-16 are cancelled without prejudice to or disclaimer of the subject matter therein. New claims 42-53 are added. Claims 2, 4, 5, 7, 14 and 41 are amended herein. These changes are believed to place the application in condition for allowance and/or place the claims in a better form for consideration on appeal. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Generic nature of claims 40 and 41 and improper withdrawal thereof***

The Examiner has withdrawn claims 40 and 41 from consideration. Applicant respectfully traverses the Examiner's determination and respectfully request reconsideration of claims 40 and 41. The Examiner indicated that claim 40 is withdrawn as being directed to a "new species" other than the elected species "a helmet insert." Applicants submit that claim 40 is generic to all of the species including the elected species and thus should not have been withdrawn. Claim 40 is directed to a moldable article that includes, *inter alia*, a layer that is "custom-fitted to a portion of a human body." Applicant added claims 42-46 which depend from claim 40 and are directed to several embodiments that are "custom-fitted to a portion of a human body," including the elected species of a helmet insert (claim 43). Applicant

maintains the election of a helmet insert and suspects that the Examiner will withdraw claims 42 and 44-46, which are not directed to a helmet insert and are not generic, until such time as claim 40, which is generic to all species, has been found allowable. Applicants have also added claims 47-53 which are also generic to all species, including the elected species.

Similarly, the Examiner indicated that claim 41 was directed to a non-elected species and that it was withdrawn. Applicant notes the Examiner's position that claim 41 is directed to a helmet and the elected species is a helmet insert. As such, Applicant amended claim 41 to be directed to, *inter alia*, "a helmet insert." Applicant respectfully traverses that claim 41 as amended is directed to a non-elected species and instead submits that claim 41 as amended is generic to more than one species, including the elected species of "a helmet insert." Applicant therefore respectfully requests reconsideration of the withdrawal of claim 41, as amended.

### ***Rejections under 35 U.S.C. § 103***

The Examiner rejected claims 1, 2 and 4-9 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,041,319 to Becker et al. ("Becker") in view of U.S. Patent No. 4,848,566 to Havens et al. ("Havens") and U.S. Patent No. 6,090,479 to Shirato et al. ("Shirato").

Applicant has cancelled claim 1, and amended claims 2 and 4-9 to depend from claim 14. Claim 14 has been rewritten in independent form. The Examiner has indicated that claim 14 includes allowable subject matter and thus should be patentable as rewritten in independent form. Claims 2 and 4-9 depend from and add features to claim 14, and thus are patentable for at least the same reason as claim 14.

Applicants therefore respectfully request the withdrawal of this 35 U.S.C. § 103(a) rejection.

***Patentability of claims 40 and 41***

Claims 40 and 41 are patentable over the art applied by the Examiner. Claim 40 is directed to a moldable article that, *inter alia*, is "custom-fitted to a portion of a human body." Claim 41 is specifically directed to, *inter alia*, a moldable article selected from the group comprising a handle, a helmet insert, a shin guard, and a seat. None of the art applied by the Examiner teaches either an article that is custom-fitted to a human body, a handle, a helmet insert, a shin guard or a seat. To the contrary, Becker is directed to foam for "electronic components having conductive leads." See Becker, col. 2, line 48-51. Similarly, Havens is directed to a blow molded container for "solid state devices" such as "electronic devices whose utility maybe impaired or destroyed by charge transfer actions, static electricity, or electrostatic discharge." See col. Havens, col. 3, lines 15-17 and 42-45. Shirato is directed to a slow shape recovered foam. See Shirato, col. 1, line 66-col. 2, line 4. Shirato teaches a variety of uses involving the slow application of force to objects, such as providing a seal between surfaces (see FIGs. 12 and 14), sealing or providing access to medications in a medication container (FIGs. 20a and 20b), and as a moving member, to push food into a fish tank in a time released manner FIGs. 21(a),(b) and (c)). However, none of these foam products is custom-fitted to a human body, a handle, a helmet insert, a shin guard or a seat, nor would a slow recovery foam be particularly suited for any of these products.

Rebecca Snow  
Appl. No. 10/791,877

As such, claim 40 and 41 are patentable over the art applied by the Examiner.  
Further, claims 42-53 depend from and add further features to claim 40, and are thus patentable for at least the same reason as claim 40.

Applicant therefore request the allowance of claims 40 and 41.

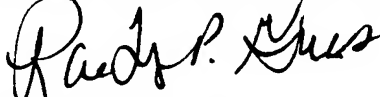
***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Rae Lynn P. Guest  
Attorney for Applicant  
Registration No. 53,482

Date: 10/6/05

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600